78-118

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. .....

GERALD W. ROLL and PATRICIA J. ROLL,

Petitioners,

v.

WEST SIDE FEDERAL SAVINGS AND LOAN ASSN., *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner in Person

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners, Gerald W. Roll and Patricia J. Roll, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on February 22, 1978 and the opinion on which it is based. That judgment affirmed the July 29, 1977 order of the District Court, Southern District of New York filed on August 4, 1977.

OPINIONS BELOW.

The opinion of the Court of Appeals and the judgment entered thereon, as yet unreported, are reproduced in Appendix A, infra. There was no formal opinion of the District Court. The order and excerpts of the transcript of that court are reproduced in Appendix B to this petition.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 22, 1978. On May 15, 1978, Mr. Justice Thurgood Marshall signed an order extending the time for filing this petition for writ of certiorari to and including July 22, 1978. Hence, this petition is timely filed. The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

Petitioners complaint was dismissed by the District Court on July 29, 1977. The questions presented in their first cause of action relate to the Federal Reserve Board implementing regulatory provisions and modifications of the statutes contained in Title I Section 125 of the Federal Truth in Lending Act, more specifically referred to as Public Law 90-321 enacted by Congress on May 29, 1968 and as to the validity of these regulatory provisions as promulgated by the Board and as to the interpretation of these statutes and regulations by the court below. There was no previous legislative history to be referred to construing the statutes and regulations hereinabove mentioned in connection with a loan transaction made by petitioners. Petitioners sought rehearing in the District Court to amend their second and third causes of action. The questions thereby arising are:

1. Whether the Federal Reserve Board has the authority to re-write the laws of Congress by re-writing Section 125 (e) of P.L. 90-321 by adding the provision set forth in 12 C.F.R. 226.9(g)-

(2) and as such, shouldn't this provision be deemed invalid?

2. Whether the exception to the right of rescission as expressed in Section 125 (e) of P.L. 90-321 is by way of definition a purchase money first mortgage.

3. Whether the Court of Appeals was correct in concluding that the consumer may not be allowed a "cooling off" period to review all ramifications of any loan transaction that will result in a lien on his entire real property and be afforded a three day opportunity under 125 (a) of the act, to cancel the transaction, and whether the petitioners should have been furnished that opportunity.

4. Whether the Federal Truth in Lending Act should be construed, liberally, in favor of the consumer and whether the court below should have viewed pro-se pleadings without regard to technicality and have afforded the petitioners the opportunity to amend their second and third causes of action.

STATUTES AND REGULATIONS INVOLVED.

Public Law 90-321 Section 125 (a), (e), Title 15 U.S.C. Section 1635 (a), (e); Public Law 90-321 Section 105; Section 130 (a) 1 and 2, Title 15 U.S.C. Section 1640 (a) 1 and 2; Title 12 C.F.R. Section 226.9 (a), (g) 1 and 2 printed as Appendix C.

STATEMENT OF THE CASE

Petitioners owned their real property consisting of forty-two acres in Dutchess County, New York. They entered into a loan commitment with respondents in December, 1974. The loan transaction was actually consummated on May 21, 1975. It was a dual purpose loan, primarily, half the loan refinanced and retired a first mortgage. Secondarily, the remaining portion was used for the construction of a home on this parcel of land. Petitioners were, at the time this loan was consummated, the owners of this acreage for more than one year and a half. At the time the loan was consummated petitioners were not furnished with the Notice of Opportunity to Rescind the transaction as specified in P.L. 90-321 Section 125 (a), notwithstanding the fact this extension of credit was not, as the exception states under P.L. 90-321 Section 125 (e), "a first lien against a dwelling to finance the acquisition of that dwelling", which is, petitioners contend, by way of definition, a purchase money first mortgage. Since the extension of credit herein was clearly not a purchase money first mortgage, the statutory and first regulatory exceptions (P.L. 90-321 Section 125(e) and 12 C.F.R. 226.9(g) 1) are not satisfied. Thus, the Notice of Opportunity to Rescind this transaction should have been furnished petitioners under P.L. 90-321 Section 125 (a) of the act. Petitioners commenced a plenary action in the District Court to recover damages under Section 130 (a) 1 and 2 of the act. The District Court dismissed the complaint of petitioners. The Court of Appeals affirmed the order of dismissal.

BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE.

The complaint in the District Court invoked the jurisdiction of the federal court under 28 U.S.C. 1331 (a).

REASONS FOR GRANTING THE WRIT.

I.

THE SECOND CIRCUIT PRECEDENT WILL PERMIT ANY MORTGAGE LENDER TO ACQUIRE A LIEN OR SECURITY INTEREST IN REAL PROPERTY CONSISTING OF GREAT ACREAGE WITHOUT NOTIFYING THE CONSUMER OF HIS OPPORTUNITY TO RESCIND THE TRANSACTION.

The decision below involves a case of major import because it permits the Board of Governors of the Federal Reserve System to re-write the laws of Congress while only authorized to supply regulations consistant with the law under Section 105 of the act (Appendix C, infra, page 18), which allows the Federal Reserve to prescribe regulations to "effectuate the purposes of", "to prevent circumvention or evasion of", or "to facilitate compliance with", the act. Regulation 226.9(g) 2 (see Appendix C, infra, page 19) added by the Board does in no way carry out the purposes of the act under these provisions. Suffice it to say, and in addition, it is in no way consonant with P.L. 90-321 Section 125 (e) (Appendix C, infra, page 17) since there is nothing in Section (e) which speaks of construction loans. They are a creation under a new statute written by the Board.

The courts attention is called to a treatise on the act which is contained in West's Federal Practice Manual, Second Edition, under Section 3557 entitled "Right to Rescind - Exceptions". It says:

"The statutory exception is in favor only of a "dwelling". The result is that a transaction to acquire a vacant lot, if it is expected to be used as the principle residence of the customer, even if subject to a first purchase money mortgage to finance its acquisition is subject to rescission, but does not qualify for the exception. The rescission section of the act was written by Congress very much as a regulation would be written. That is, it is quite specific and left virtually no room for the Board to exercise any discretionary authority in drafting the regulation".

Moreover, in order to qualify under the exception the loan must qualify as a purchase money first mortgage. See 114 Congressional Record Pt. 11, 14388 May 22, 1968 remarks of Representative Sullivan wherein she says:

"The conference substitute applies to first mortgages which were exempted entirely from the Senate bill. Nearly all of the disclosure requirements applying to other forms of consumer credit. The main exception is the total amount of the dollar cost of the finance charge over the life of the mortgage. This exemption or exception applies however only to purchase money first mortgages not to refinancing".

"Any credit transaction which involves a security interest in property must be clearly explained to the consumer as involving a mortgage or lien; any such transaction involving the consumers residence other than in a purchase money first mortgage for the acquisition of the home

carried a three day cancellation right".

Even assuming, arguendo, that regulation (g) 2 was a valid provision, even at this instance its ambiguity is manifest. It can be interpreted in almost any manner. It does not mention dual purpose loans. It does not limit the amount of land the construction is bordered to, nor does it speak of purchase money mortgages. It lets the door open for a myriad of interpretations all alluding to the potential damage of the American Consumer. Should the land be worth considerably more than the loan, the mortgagee can foreclose, buy the property in, then sell it at a substantial profit. Does this effectuate the purpose of the act? See Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. at page 270, wherein the dicta relates as follows:

"The thrust of this subchapter and act and its fundamental weapon of compelled disclosure is prospective and the purpose of same is to put borrower in possession of pertinent information before the plunge so that he may know and intelligently compare his options".

To the same effect is Gerasta v. Hibernia National Bank, 411 F. Supp. at page 176, the court stated:

"Although Congress was concerned with abuses flowing from a creditor's use of mortgages, such as Hibernia's practice in this case, it was equally concerned with the improper use of other types of liens". Such as: "Any credit transaction which involved a security interest in the property must be clearly explained to the consumer as involving a mortgage or lien...."

II.

THE TRUTH IN LENDING ACT SHOULD BE CONSTRUED LIBERALLY IN FAVOR OF THE CONSUMER.

This is illustrated in Picking v. Pennsylvania Railroad Co., 3rd Circuit 151 F. 2d at page 240-244. Also in Sellers v. Wollman, 510 F.2d at page 119, in its per curiam opinion the court stated:

"In addition we have held that the Truth in Lending Act is to be construed liberally in favor of the consumer".

See also Thomas v. Meyers, 479 F.2d at page 740 wherein Goldberg, Circuit Judge stated:

"Chief Justice Burger has very recently expressed the guiding philosophy for our interpretation of the Federal Consumer Protection Act 15 U.S.C. 1601 et seq., more popularly known as the Truth in Lending Act, and Regulation Z, 12 C.F.R. 226 promulgated thereunder".

"Passage of the Truth in Lending Act in 1968 culminated several years of Congressional study and debate as to the propriety and usefullness of imposing mandatory disclosure requirements on those who extend credit to consumers in the American Market".

III.

THERE IS NO PREVIOUS LEGISLATIVE HISTORY REGARDING DUAL PURPOSE LOANS AS CONSTRUED WITHIN THE SCOPE OF REGULATION (G) 2.

The following is an opinion of the Board of

Governors of the Federal Reserve System regarding dual purpose loans. It is public position letter 374 dated July 19, 1970. It reads as follows:

"You inquire as to whether the right of rescission is applicable in the case where a customer executes a non-purchase money first lien deed of trust on his principal's residence if a portion of the proceeds is used to pay off a prior deed of trust on the residence and the balance is used for business purposes.

The rescission provision would apply if the proceeds were used principally to pay off the prior deed of trust. Both the Act and Regulation Z define Consumer Credit as "...(c)redit offered or extended to a natural person, in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes...." While, the definition of "primarily" is a matter for the courts to decide, we advise, as an abundance of caution, to comply with the rescission provision of the Act where the use of the proceeds is questionable". Tynan Smith, Assistant Director.

In summary, we submit, that the decision below will thus cause great and irreparable injury to consumers making construction loans who own large parcels of land.

We submit, furthermore, that the issue raised by the decision of the court below is in conflict with the intent and purposes of the Federal Truth in Lending Act, is adversely consequential to the American Consumer, and should be resolved by this court.

CONCLUSION.

For all the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

THE DECISION OF THE COURT OF APPEALS

No. 77-7410

UNITED STATES COURT OF APPEALS

For The Second Circuit

GERALD W. ROLL and PATRICIA J. ROLL,

Plaintiffs-Appellants,

v.

WEST SIDE FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY, successor by merger to PUTNAM COUNTY FEDERAL SAVINGS AND LOAN ASSOCIATION,

Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of New York.

Decided and filed February 22, 1978.

Before: Hays, Paul R.; Feinberg, Wilfred; Mansfield, Walter R.; Circuit Judges.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by Appellants pro-se and by counsel for Appellee.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

Gerald W. Roll and Patricia J. Roll appeal from an order of Judge Pierce in the United States District Court for the Southern District of New York, dismissing their complaint against West Side Federal Savings and Loan Association of New York City, successor by merger to Putnam County Federal Savings and Loan Association, the Rolls' mortgagee. In open court on July 29, 1977, Judge Pierce ruled that none of the Rolls' three causes of action stated a claim upon which relief can be granted under 42 U.S.C. Section 1983 and 1985 and their jurisdictional counterpart, 28 U.S.C. Section 1343.

Appellants' first claim is that appellee improperly failed to give notice of their right to rescind the loan transaction, as allegedly required by the Truth in Lending Act, 15 U.S.C. Section 1635(a). However, both 15 U.S.C. Section 1635 (e) and Regulation Z, 12 C.F.R. 226.9(g)(2), properly issued by the Board of Governors of the Federal Reserve System, recognize that certain transactions are exempt from the notice requirement. Since the loan here was "in connection with the financing of the initial construction of the residence of the customer", the transaction was ex-

empt and no notice of the right to rescind was required. So-called Public Position Letter No. 374, dated July 17, 1970, which appellant stressed at oral argument, apparently does not deal with a construction loan and is therefore not pertinent. The Rolls' second and third claims are without merit because neither the bank nor appellants' contractor acted "under color of" law within the meaning of 42 U.S.C. Section 1983, and because there is no claim of classbased, invidious discrimination violative of 42 U.S.C. Section 1985.

We have considered all of appellants' arguments, and they are without merit. The order of dismissal is affirmed.

/s/ PAUL R. HAYS
/s/ WILFRED FEINBERG
/s/ WALTER R. MANSFIELD

Circuit Judges

APPENDIX B

THE ORDER OF THE DISTRICT COURT

77 Civ. 2796, GERALD W. ROLL, et ano,
-v- WEST SIDE FEDERAL SAVINGS AND
LOAN ASSOCIATION (PRO SE)

Endorsement Order

For the reasons stated on the record, defendant's motion to dismiss the complaint is hereby granted and the attached motion for a preliminary injunction is hereby denied as moot.

The complaint is dismissed.

SO ORDERED.

Dated: New York, N.Y.
July 29, 1977

/s/ LAWRENCE W. PIERCE
U.S.D.J.

Filed August 4, 1977.

EXCERPTS FROM THE TRANSCRIPT

Dated: July 29, 1977.

THE COURT: In the plaintiff's first cause of action the plaintiffs' claim that the defendant unlawfully failed to inform him of his right to rescind the loan agreement pursuant to 12 C.F.R. 226.9.

It is clear to the Court from paragraphs 7 and 8 of the complaint that the loan at issue here was a building or construction loan. Under 12 C.F.R. 226.9 (g), there is an express exception to the general rule that a borrower has a right to rescission.

The applicable section reads as follows:

"Exceptions to general rule (a) General rule refers to the right to rescind. This section does not apply to:

..."(2) A security interest which is a first lien retained or acquired by a creditor in connection with the financing of the initial construction of the residence of the customer, or in connection with a loan committed prior to completion of the construction of that residence to satisfy that construction loan and to provide permanent financing of that residence..."

Plaintiff further claims a right to rescind under Title 15 U.S.C. Section 1635 (e). However, the language of that statute clearly illustrates that there is no right to rescind where the loan's purpose is to finance the acquisition of a dwelling. Not only does plaintiff misread the terms of the statutes, reading in an "exception" to the absence of a right to rescind where the statute in fact sets forth an exception to the general right to rescind, but more fundamentally, 15 U.S.C. 1635 (e) does not even apply to the facts of this case. Section 1635(e) speaks of a loan to finance the acquisition of a dwelling. Here, according to the complaint, the loan at issue was to finance construction. For the same reasons, the dicta cited by the plaintiffs in Charnita Inc. v. F.T.C., 479 F 2d 684, Third Circuit, 1973, construing Section 1635 (e) is inapplicable.

Thus, the Court must conclude that plaintiffs' first claim fails to state a claim upon which relief can be granted."

APPENDIX C

STATUTES AND REGULATIONS INVOLVED.

Public Law 90-321 Section 125 (a), (e),
Title 15 U.S.C. Section 1635 (a), (e).

Section 125. Right of Rescission as to Certain Transactions

*(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

*(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

*As amended 10/28/74.

P.L. 90-321 Section 105

Section 105. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

P.L. 90-321 Section 130 (a), 1 and 2
Title 15 U.S.C. Section 1640 (a), 1 and 2

Section 130. Civil liability

*(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of -

(1) any actual damage sustained by such person as a result of the failure;

(2) (A) (i) in the case of an individual action twice the amount of any finance charge in connection with the transaction or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph, shall not be less than $100 nor greater than $1,000.

*Amended 10/28/74 and 3/23/76.

Title 12 C.F.R. Section 226.9 (a), (g) 1 and 2

Section 226.9 - Right to rescind certain transactions

(a) General Rule. Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day following the date of consummation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. Notification by mail shall be considered given at the time mailed; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business.

(g) Exceptions to general rule. This section does not apply to:

(1) The creation, retention, or assumption of a first lien or equivalent security interest to finance the acquisition of a dwelling in which the customer resides or expects to reside.

(2) A security interest which is a first lien retained or acquired by a creditor in connection with the financing of the initial construction of the residence of the customer, or in connection with a loan committed prior to completion of the construction of that residence to satisfy that construction loan and provide permanent financing of

that residence, whether or not the customer previously owned the land on which that residence is to be constructed.

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In The

Supreme Court of the United States

October Term, 1978

No. 78-118

GERALD W. ROLL and PATRICIA J. ROLL,
Petitioners,

—v.—

WEST SIDE FEDERAL SAVINGS AND LOAN ASSN.,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO THE
PETITION FOR WRIT OF
CERTIORARI

QUESTION PRESENTED

Whether the unanimous finding of the Court of Appeals that this transaction was exempt from the requirement of a right to rescind notice pursuant to Title 15 U.S.C. § 1635 and Regulation Z, 12 C.F.R. § 226.9, merits review by this Court?

STATEMENT OF THE CASE

This is an action commenced by Petitioners Gerald W. and Patricia J. Roll (Rolls) against Respondent West Side Federal Savings and Loan Ass'n (West Side) asserting three causes of action. The first alleged the Rolls entered into a transaction with West Side in May 1975 in which they borrowed $55,000 to finance the construction of a home on their property in Dutchess County, New York State, but were never advised by West Side of a right to rescind the loan pursuant to Title 15 U.S.C. § 1635 and

Regulation Z, 12 C.F.R. § 226.9. They alleged in this cause of action that West Side violated the Civil Rights Act, 42 U.S.C. § 1983. The second and third causes of action alleged violations of Title 42 U.S.C. § 1985.

The District Court granted West Side's motion to dismiss for failure to state a claim for which relief can be granted pursuant to Fed R. Civ. P. Rule 12(b)(6). The grounds were (1) there was no state action within the terms of Title 42 § 1983, (2) there was no class-based discrimination within Title 42 § 1985 and (3) there was no right to rescind the loan pursuant to Title 15 U.S.C. § 1635 and Regulation Z. Upon the Rolls' application for reargument the District Court adhered to its previous ruling.

On appeal to the Second Circuit Court of Appeals, the Court affirmed, holding there was no right to rescind and no notice requirement because the loan was in connection with the initial

construction of the home and that the second and third claims were without merit because the bank did not act under color of law within 42 U.S.C. § 1983 and because there was no claim of class-based discrimination under 42 U.S.C. § 1985.

On this application the Rolls attack the decisions of the Courts below insofar as they held the language of Regulation Z, 12 C.F.R. § 226.9(g) exempted this loan from the requirement of a notice to rescind. They also argue that if 12 C.F.R. § 226.9(g) does exempt this transaction it was invalidly promulgated. We submit that the Rolls' arguments are unsupported and do not merit review by this Court.

ARGUMENT

The Rolls Did Not Have a Right to Rescind This Loan

We urge that the Courts below correctly found that the Rolls did not have a right of

rescission and that therefore there was no notice requirement.

Title 15 U.S.C. § 1635 provides that notice of a right to rescind the loan transaction shall be given pursuant to regulations promulgated by the Board of Governors of the Federal Reserve System. The controlling section of Regulation Z, promulgated thereunder, 12 C.F.R. § 226.9(g) provides for certain exemptions to the right to rescind as follows:

> "Exceptions to general rule [(a) refers to the right to rescind]. This section does not apply to:
>
> * * *
>
> (2) A security interest which is a first lien retained or acquired by a creditor in connection with the financing of the initial construction of the residence of the customer, or in connection with a loan committed prior to completion of the construction of that residence to satisfy that construction loan and provide permanent financing of that residence whether or not the customer previously owned the land on which that residence is to be constructed."

We submit that this was a construction loan within the meaning of the above language. Therefore, the Rolls did not have a right to rescind this loan.*/ The loan was issued in connection with the initial construction of a home for the Rolls and the mortgage granted West Side a first lien on the premises.

The Rolls knew this was a construction loan. In their complaint (paragraph 7) they stated:

> "That on or about December 31, plaintiff obtained a building loan and mortgage commitment from the defendant bank in the sum of $55,000.00 (FIFTY-FIVE THOUSAND DOLLARS)."

---

*/ The entire loan was advanced to the Rolls and it was only after West Side commenced a foreclosure action because the Rolls, since June 1976, failed to make any payments on the loan, neither interest nor principal, that they claimed they should have been given notice of a right to rescind.

The mortgage itself stated (paragraph 42) that it is subject to a building loan agreement dated May 21, 1975, which was made a part of the mortgage. The building loan agreement stated it is a loan from the bank for the purpose of building a home on the property. In addition, while allocating $26,320.86 of the loan proceeds to satisfy a pre-existing mortgage on the land, it provided that the balance of the loan was to be advanced in accordance with a stipulated construction schedule.

We submit that the fact that the prior mortgage on the land was satisfied out of these loan proceeds makes no difference. The two exceptions in subparagraph (g) of Regulation Z are first, a first lien to finance the acquisition of a dwellin or, second, a first lien in connection with financing the initial construction of a residence. In the instant case the language of the second exception should control, without regard to whether or not any part of the loan was used to pay off

the prior mortgage on the land. The evidence is indisputable that this was a loan "in connection with the financing of the initial construction of the residence of the customer...."

The Exemption Contained In Regulation Z was Validly Promulgated

The Rolls also argue that the Board of Governors of the Federal Reserve System exceeded its authority in issuing Regulation Z to the extent it exempts this transaction from the rescission requirements. We submit that the Second Circuit was correct where it specifically stated in its opinion that Regulation Z was "properly issued".

Subdivision (g) to Regulation Z does no violence to the language of the statute. 15 U.S.C. § 1635(e), exempts from the notice requirement a transaction in which one finances "the acquisition of [a] dwelling". Subdivision (g) includes a loan in connection with the

construction of a dwelling as an exempt transaction. The difference between a loan for "acquiring" or "constructing" a dwelling is not so great as to constitute a departure from the intent of Congress as expressed in the statute.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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